



**Imwatok v Nairobi City County & 7 others (Constitutional Petition 8 of 2018)
[2026] KEHC 658 (KLR) (Anti-Corruption and Economic Crimes) (30 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 658 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
CONSTITUTIONAL PETITION 8 OF 2018**

**BM MUSYOKI, J
JANUARY 30, 2026**

BETWEEN

HOM PETER A IMWATOK PETITIONER

AND

THE NAIROBI CITY COUNTY 1ST RESPONDENT

HIS EXCELLENCY MIKE MBUVI SONKO 2ND RESPONDENT

MR STEPHEN LEBOO OLE MORINTAT 3RD RESPONDENT

MRS VESIKA KANGOGO 4TH RESPONDENT

PUBLIC PROCUREMENT OVERSIGHT AUTHORITY 5TH RESPONDENT

THE CONTROLLER OF BUDGET 6TH RESPONDENT

AAR INSURANCE KENYA LIMITED 7TH RESPONDENT

BLISS GVS HEALTHCARE LIMITED 8TH RESPONDENT

RULING

1. This ruling is for the petitioner's application dated 20-04-2018 which had the following prayers;
 - a. The 1st respondent provides copies of the invoices and other relevant documentary evidence forwarded to them by the 7th respondent for purposes of payment in the two extensions granted to them for provision of medical insurance services for the period 1st July, 2017 to 30th September, 2017 and 1st October, 2017 to 31st December, 2017 respectively amounting to Kshs 652,791,602/=.



- b. The 2nd , 3rd and 4th respondents to provide certified copies of payment vouchers used for processing of payment by the 1st respondent for the extension of the period 1st July, 2017 to 30th September, 2017 and 1st October, 2017 to 31st December, 2017 respectively amounting to Kshs 652,791,602/=.
 - c. The 2nd , 3rd and 4th respondents to provide certified copies of payment vouchers used for processing of payment by the 1st respondent for purposes of payment of Kshs 1,062,123,010 for the contract No. NCC/PSM/T/032/2017 - 2018.
 - d. The 1st respondent provides copies of the invoices and other relevant documentary evidence forwarded to them by the 7th respondent for purposes of payment of Kshs 1,062,123,010 for the contract No. NCC/PSM/T/032/2017-2018.
 - e. The 7th respondent provides the utilisation report for the medical insurance services rendered to the staff of the 1st respondent between the period 1st July, 2017 and 31st December, 2017 during the period they were granted extension for provision of medical insurance cover.
 - f. The 7th respondent provides the sub contract entered between the 7th respondent and the 8th respondent for provision of medical services to the 1st respondent's members of staff.
 - g. The costs consequent upon this petition be borne by the respondents in any event.
2. The application is premised on the grounds on the face of it which can be summarized as that, taxpayers lost Kshs 1,724,913,612.00 through the 1st, 2nd, 3rd, 4th, 5th and 6th respondents' irregular and illegal procurement of medical insurance cover for its member of staff during the financial year 2016/2017 and 2017/2018 which was against the provisions of Public Finance Management (County Governments) Regulations, 2015. The covers were procured from the 7th respondent who subcontracted the 8th respondent.
 3. The application was supported by affidavit of the petitioner sworn on 20th April 2018 which was also in support of the main petition. The supporting affidavit which has 116 paragraphs gives the history of the procurements of the contracts in question and maintains that the same were irregular as they were not supported by the approved budget of the 1st respondent.
 4. The petitioner was at the time of filing the petition a Member of the County Assembly for Nairobi City County Assembly representing Makongeni Ward and also the minority Chief Whip. He was also a member of the House Business Committee, Finance Budget and Appropriation Committee, Water Committee and the Chairperson of the County Assemblies Sports Association.
 5. The tender in question was procurement of medical cover which was awarded to the 7th respondent. The petitioner deponed that in 2015/2016 financial year, the approved budget for medical insurance cover was Kshs 500,000,000.00 and later a supplementary of Kshs 250,000,000.00 was made for the item. In 2016/2017 financial year, the budget for the same item was projected at 850,000,000.00 with supplementary of Kshs 28,000,000.00. He adds that when the cover for 2016/2017 was about to expire, the 1st respondent failed to procure staff medical cover for 2017/2018 which resulted to lose of money through unnecessary extensions. The extension of the cover was done by the 1st, 2nd , 3rd and 4th respondents on 28-06-2017 for a period of six months at a cost of Kshs 652,790,466.00 which was done without recommendation of the evaluation committee in complete disregard to Section 139(2) of the Public Procurement and Assets Disposal Act.
 6. The petitioner depones further that, a new service provider had been procured in December 2017 for Kshs 1,062,123,010.00 for the period between 1st January 2018 to 31st December 2018 with the new



- premium payable by January 2018 which in addition to the payment of the extension, overrun the budget by Kshs 874,913,612.00. The 6th respondent confirmed by letter dated 2-02-2018 that the 1st respondent had not budgeted for the expenditure item. The petitioner maintains that the said acts were in violation of Section 135 of the *Public Finance Management Act*, 2012 as read together with Regulation 39(9) of the Public Finance Management (County Government) Regulations, 2015.
7. According to the petitioner, there were withdrawals of funds from Equalization Fund, Consolidated Fund, County Revenue Funds, Exchequer Account and other accounts for payment of the medical covers which were contrary to Section 5 of the *Controller of Budget Act*, 2016. He adds that these acts overran the 1st respondent's budget by over 103 per cent for financial year 2017/2018 contrary to Section 135(7) of the *Public Finance Management Act* and Regulation 39(9) of the Public Finance Management (County Government) Regulations, 2015.
 8. The petitioner avers further that the tender for the procurement of medical cover was advertised on 19th October 2017 and tenders were opened on 10th November 2017 and upon evaluation, Britam Insurance came in position one with a score of 100 per cent but the committee decided to re-tender on the basis that the bidders quoted above the 1st respondent's budgeted figure for 2017/2018 which decision was not backed by any tangible, substantiated and verifiable evidence.
 9. The petitioner has also deponed that the cancellation of the first tender was influenced by other motives which were not disclosed to the tenderers and the public. He adds that the staff members of the 1st respondent were 12,637 while the tender called for cover of 14,000. He adds that the second tender was opened on 19-12-2017 where the 7th respondent and CIC group were found to be responsive. On technical evaluation, the two bidders achieved the pass mark of 80 per cent but the 7th respondent was recommended for award of the tender at Kshs 1,062,123,010.00.
 10. The petitioner also had issue with what he called addendums to the tender dated 11th December 2017 and 31st October 2017 which he claims not to have been justified. In summary, the petitioner argues that the tenders were marred by irregularities and illegalities including limiting some of the 1st respondent's staff members to the 8th respondent only while others were unlimited.
 11. The petitioner has claimed that the members of the County Assembly were bulldozed to pass supplementary budget for 2017/2018 financial year in a bid to sanitize the irregularities already committed but he chose not to be part of it. He adds that the 7th and 8th respondents were defrauding taxpayers in collaboration with the 2nd, 3rd, 4th and 6th respondents. He stated further that the County Assembly was not keen to hear his objections. He also alleges that the 3rd respondent admitted paying Kshs 1,724,913,612.00 irregularly and that there were no memoranda sent to the Committee of Finance Budget and Appropriation. He faults the capacity of the 7th respondent to deliver quality services which were being done by the 8th respondent on sub-contract in violation of the terms of the tender documents.
 12. He avers that following the above acts, he wrote to the 6th respondent on 26th day of March 2018 asking to be supplied with all relevant documents that were forwarded to the 6th respondent by the 1st respondent to request for authorization of payment of Kshs 1,724,913,612.00 to the 7th respondent while aware that the approved budget estimate for medical provision was only Kshs 850,000,000.00.
 13. He claims that the 6th respondent admitted through a call to him that she authorised the payment despite the lack of budget. He asked for written communication on this which never came until the supplementary budget was passed. His advocates wrote a letter dated 4-04-2018 but the respondents except the 6th failed to reply to his advocates' letter. The 6th respondent was evasive in its response and gave unreliable documentations.



14. The respondents filed preliminary objections challenging the jurisdiction of this court which were upheld through a ruling of Honourable Justice Hedwig Ongundi (as she then was) resulting to striking out of the petition which the petitioner appealed vide civil appeal number 300 of 2018. By a judgment dated 26th April 2024, the Court of Appeal reversed the ruling of the Honourable Judge and ordered that the matter be heard before this court. That is why this matter has taken eight years to prosecute the application.
15. After the file reached this court, I ordered the parties to file responses to the notice of motion but only 1st, 5th and 7th respondents have done so. It is unfortunate that the circumstances may have since changed due to the passage of time, but the matter must be heard and determined in one way or the other.
16. By grounds of opposition dated 5th November 2025, the 1st respondent opposed the application stating that the same is fatally defective and that the employees of the 1st, 2nd and 4th respondents enjoyed statutory immunity under Section 133 of the [County Governments Act](#) and Section 206 of the [Public Finance Management Act](#). The said respondent also claims that the matters raised by the petitioner were subject to disciplinary control of the County Public Service Board and external auditing by the Auditor General.
17. The 1st respondent added that the documents requested by the petitioner can only be supplied under discovery and inspection process in a civil suit and not through a constitutional petition. It also claims that the provision of information should be requested under [Access to Information Act](#) and not through a constitutional petition and that the request for information in this matter is not anchored on a specific substantive right. The 1st respondent states further that the procedure provided in the [Access to Information Act](#) was not followed before this petition was filed and therefore the doctrine of exhaustion should apply. It concludes that the 2nd and 4th respondents should be struck out from the proceedings as they are improperly joined.
18. In an affidavit sworn by the counsel for the 1st respondent dated 5th November 2025, it is averred that the 1st respondent has not been properly served with the petition and the notice of motion. He also alleged that the persons who were relevant to this petition are no longer employees of the 1st respondent and adds that no evidence of impropriety has been tendered and the orders sought are a fishing expedition geared towards obtaining evidence to prove an alleged civil wrong under the guise of a constitutional claim.
19. On its part, the 5th respondent has filed notice of preliminary objection and grounds of opposition dated 20th August 2025 in which it stated that the application does not raise any cause of action against it and its presence in this matter is not necessary. It adds that the application and the entire petition are misconceived, frivolous and vexatious and should therefore be dismissed.
20. Mr. Hosea Kiprop a Chief Officer of the 7th respondent has also sworn an affidavit dated 6th November 2025. In it, he avers that the 7th respondent provided medical insurance cover for the 1st respondent's employees for the financial years 2015-2017 & 2017-2018 through tenders and signed contracts. He also admits that there was a short-term extension of the contract as stated by the petitioner but denies that the 7th respondent was privy to acts of omission or commission by any officer or staff of the 1st respondent and they only responded to request made for extension.
21. The deponent avers that there is no requirement for the client to approve medical facilities the 7th respondent should contract. In summary, he denies any wrong doing by the 7th respondent in the tendering and contracting process. He also states that the petition has been overtaken by events in



respect to prayers sought against the 7th and 8th respondents. He adds that the 7th and 8th respondents are being dragged to political wrangles between the two arms of the County government which should have been solved using their internal mechanisms.

22. The only parties who have filed their submissions are the petitioner and the 7th respondent. I have read the petitioner's submissions and supplementary submissions dated 11th August 2025 and 21st August 2025 respectively and the 7th respondent's submissions dated 6th November 2025. Having gone through the said submissions and the documents filed by the parties, I have formed opinion that the only issue which comes out of the notice of motion is whether the petitioner has made up a case for an order for supply of the requested information.
23. It is common ground that the tenders were advertised and contracts in question were entered into. It is also agreed that the contract covering 2015/2017 financial year was extended for six months without going through competitive procurement process. It is also common ground that the documents and the information the petitioner asked for existed and are in the hands of the 1st, 6th and 7th respondents. The 2nd, 3rd and 4th respondents were sued by virtue of the positions they held in the 1st respondent and taking judicial notice that the government has since changed twice, they cannot possibly be still in possession of the information or documents.
24. Only the 7th respondent has filed a substantive response in respect of the documents by stating that it has so far supplied the information in its possession through its replying affidavit of Hosea Kiprof dated 6th November 2025.

Article 35(1) of *the Constitution* states that;

“Every citizen has a right of access to:

- a. Information held by the State; and
- b. Information held by another person and required for the exercise or protection of any right or fundamental freedom.’

Article 3(1) of *the Constitution* provides that;

‘Every person had an obligation to respect, uphold and defend this Constitution.’

25. This petition is brought for the interest of the public and in discharge of a civic duty to protect and promote *the Constitution*. Without going to the merits of the petition, I believe that the petitioner who was a Member of the County Assembly of Nairobi City County at the time of the tenders in question is pursuing legitimate question on behalf of the people of the Nairobi City County and the Kenyans at large. If indeed there were procurement irregularities and breach of Public Finance Management, it would border on violation of Articles 10(c) and 232 of *the Constitution*.
26. In order to establish whether there were procurement improprieties, the petitioner would definitely need the information and documents he had requested. That therefore satisfies the condition that the information he requested is needed for protection of a constitutional right as required under sub-article 1(b) of Article 35 in respect of the 7th respondent. It is undoubtably clear that the information being sought is important and necessary to the petitioner for prosecution of this petition hence he is entitled to the information.
27. The 1st respondent has argued that the petitioner has not exhausted the mechanism provided for in the *Access to Information Act* and therefore the doctrine of exhaustion should stop this court from issuing



the orders. The doctrine of exhaustion posits that parties should first pursue all alternatives given by the law for any dispute resolution or process before approaching the court. This doctrine promotes the importance of dispute resolution through methods other than the formal courts leaving the court as the last resort for dispute resolution. In *Muthinja & another v Henry & 1756 others* [2015] KECA 304 (KLR), the Court of Appeal held that;

“The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside of courts. This accords with Article 159 of *the Constitution* which commands Courts to encourage alternative means of dispute resolution.”

28. Section 8 of the Act requires that an application for access to information should be made in writing to the public body and Part IV of the Act gives the procedure for dealing with review of decision by the public body on an application for access to information. The Commission of Administrative Justice has powers under Section 14 to review a decision of the public entity or private body. The Section provides specific decisions which the Commission can review as follows;
- a. a decision refusing to grant access to the information applied for;
 - b. a decision granting access to information in edited form;
 - c. a decision purporting to grant access, but not actually granting the access in accordance with an application;
 - d. a decision to defer providing the access to information;
 - e. a decision relating to imposition of a fee or the amount of the fee;
 - f. a decision relating to the remission of a prescribed application fee;
 - g. a decision to grant access to information only to a specified person; or
 - h. a decision refusing to correct, update or annotate a record of personal information in accordance with an application made under section 13.
29. The 1st respondent claims that since the petitioner has not exhausted the procedure provided above, the court must restrain itself from granting the orders. I note that the 1st respondent did not make any decision within fifteen days as provided for in Section 11(1) of the Act and if such was made, it was not communicated to the petitioner. There was therefore no decision of which the petitioner could seek review from the Commission. In that regard I do hold that the doctrine of exhaustion does not apply to this case.
30. The petitioner has annexed letters marked as exhibit PAI 26 to PAI 29 showing that he requested for the information from the 2nd, 6th, 7th and 8th respondents. From the correspondence, it appears that only the 6th respondent responded and actually supplied the information and documents. I have gone through the replying affidavit of the 6th respondent including the annexures thereto and I am satisfied that it has sufficiently supplied the information in its possession and as such there is no justification of issuing orders against it.
31. The 8th respondent is said to have been a sub-contractor of the 7th respondent and any payments to it must have been tied to those to the 8th respondent. The petitioner has not demonstrated any possibility of impropriety against the 8th respondent. The petitioner in this matter has not convinced me that the



contracts or documentation between the 7th respondent and the 8th respondent are necessary for the prayers he is seeking in this petition. Where the information sought by the petitioner is held by a private entity, it must be shown that it is required for purposes of protecting a constitutional right. In *David Nyekorach Matsanga & another v Philip Waki & 3 others* [2017] KEHC 3631 (KLR), it was held that;

“Apart from that it is clear from Article 35 of *the Constitution* that it applies to information held by the State or if held by an individual, must be shown to be required for the exercise or protection of any right or fundamental freedom.”

32. I have noted the prayers in the petition and the circumstances of the case and I do find it justifiable for this court to grant orders which I proceed to grant as follows;
- a. The 1st respondent is hereby ordered to within ninety (90) days from the date of this ruling supply the petitioner with copies of the invoices and other relevant documents forwarded to it by the 7th respondent for purposes of payment in two extensions granted to the 7th respondent for provision of medical insurance services for the period 1st July, 2017 to 30th September, 2017 and 1st October, 2017 to 31st December, 2017 respectively amounting to Kshs 652,791,602/=.
 - b. The 1st respondent is hereby ordered to within ninety (90) days from the date of this ruling supply the petitioner with certified copies of payment vouchers used for processing of payment of Kshs 1,062,123,010/= to the 7th respondent for the contract No. NCC/PSM/T/032/2017 - 2018.
 - c. The 1st respondent is hereby ordered to within ninety (90) days from the date of this ruling to supply the petitioner with copies of all the invoices and other relevant documents forwarded to it by the 7th respondent for purposes of payment of Kshs 1,062,123,010/= for the contract No. NCC/PSM/T/032/2017-2018.
 - d. The costs of the application shall be in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF JANUARY 2026.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Ruling delivered in presence of;

Mr. Wanjihia for the petitioner;

Miss Rachier holding brief for Miss Adunga for the 6th and 8th respondent; and

Miss Esami holding brief for Mr. Nyamu for the 7th respondent.

